TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 304.

JOHN W. LE CRONE, RECEIVER OF THE ORINOCO COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

WILLAM G. McADOO, SECRETARY OF THE TREASURY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 20, 1919.

(26,957)

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Court of Appeals of the District of Columbia, October Term, 1918.

No. 3182. No. 13, Special Calendar.

JOHN W. LE CRONE, Receiver of The Orinoco Company, Limited, Appellant,

vs.

WILLIAM G. MCADOO, Secretary of the Treasury.

Appeal from the Supreme Court of the District of Columbia.

Filed May 4, 1918. Printed May 11, 1918.

1 Court of Appeals of the District of Columbia.

No. 3182.

JOHN W. LE CRONE, Receiver of The Orinoco Company, Limited, Appellant,

vs.

WILLIAM G. MCADOO, Secretary of the Treasury.

Supreme Court of the District of Columbia.

At Law. No. 61058.

JOHN W. LE CRONE, Receiver of The Orinoco Company, Limited, Plaintiff,

vs.

WILLIAM G. MCADOO, Secretary of the Treasury, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

Petition for Writ of Mandamus.

Filed February 12, 1918.

In the Supreme Court of the District of Columbia.

Law. No. 61058.

JOHN W. LE CRONE, Receiver, &c., Petitioner,

against

WILLIAM G. MCADOO, Secretary, &c., Defendant.

The Petition of John W. Le Crone respectfully shows:

1. That he is and ever since September 1st, 1909, has been the Receiver of the Orinoco Company Limited (a corporation), duly appointed by the District Court within and for the Fifth Judicial District of the State of Minnesota; duly qualified and acting as such.

2 2. That the defendant is and ever since March 4th, 1913, has been the Secretary of the Treasury of the United States of America, duly qualified and acting as such.

3. Heretofore, to wit; on the 9th day of September 1909 the Government of the said U. S. A., acting in that behalf through its Department of State, entered into a Protocol of that date with the Government of the United States of Venezuela, whereby it was stipulated, in consideration of the release by the said U. S. A. of certain claims against the said U. S. V. for damages for injuries theretofore inflicted upon the said Orinoco Company Ltd. and the other citizens of the said U. S. A. named therein, (and the other considerations therein mentioned) that the said U. S. V. should pay to the said U. S. A., in trust for its said injured citizens, the aggregate sum of $385,000 in eight equal annual instalments, beginning on that day.

4. That payments in accordance with said stipulation were made by said U. S. V. and the same were thereupon deposited and covered into the Treasury of the said U. S. A. (at the City of New York) in accordance with the provisions of the Act of Congress approved Feby. 27th, 1896.

5. Afterwards your Petitioner as such Receiver made claim against such Trust Fund before the Secretary of State of the U. S. A., who on the 20th day of June, 1911, proceeding under and in accordance with said Act of Congress, determined that there was due to your Petitioner as such Receiver the full sum of $75,000 out of said Fund.

6. Afterwards said Secretary of State, proceeding under and in accordance with said Act of Congress, duly certified his said determination to the Secretary of the Treasury of the said U. S. A., by his several Certificates, including the two hereinafter especially mentioned and described.

7. Afterwards, to wit: on the 11th day of May 1917, your Petitioner presented said Certificates, to wit: one dated Aug. 25th 1912 for the payment of $9,375, (No. 2333) and one dated May 5th 1917 for the payment of $46,875 (No. 2516) to the defendant at the Treasury in the City of Washington D. C., and requested him to pay the amounts so found and certified to be due him as such Receiver; which defendant then refused and yet refuses to do; to your Petitioner's great detriment and damage.

8. The said District Court heretofore, by its Order filed and entered therein on the 29th day of October 1917, directed your Petitioner to institute and prosecute this proceeding in this Court.

10. As your Petitioner has, as he is advised by his Counsel, no other remedy or redress in the premises, he prays that a peremptory Writ of Mandamus may issue to said defendant, commanding him to forthwith pay the said amounts covered by said Certificates to your Petitioner in accordance with the provisions of said Act, and that your Petitioner recover his damages and costs.

J. W. LE CRONE,
Petitioner.

Dated Jany., 1918.

McLANAHAN & BURTON AND
GEO. N. BAXTER,
Attorneys for Petitioner.

3 STATE OF MINNESOTA,
Rice County, ss:

John W. Le Crone of the City of Faribault in said County, being first duly sworn deposes and says, that he is and has been Receiver of the Orinoco Co'y Ltd., as set forth in the foregoing Petition subscribed by him and that the facts, matters and things set forth and alleged in said Petition are true.

JOHN W. LE CRONE.

Subscribed and sworn to before me this 25th day of January, 1918.
[NOTARIAL SEAL.] ROBERT MU
Notary Public in and for said County.

[L. S.]

My commission expires July 17th, 1923.

Answer of William G. McAdoo to Rule to Show Cause.

Filed March 19, 1918.

* * * * * * *

The respondent, William G. McAdoo, Secretary of the Treasury, reserving unto himself the benefit and advantage of all manner of objection and exception to the errors and insufficiencies of the petition for the rule to show cause, and to the jurisdiction of the Court, and to the lack of status of the petitioner to ask for, or to be granted, the rule to show cause, nevertheless, answers the rule as follows:

One. This respondent sets forth the account and status of the "Orinoco Corporation Indemnity Fund" as follows:

Statement of receipts into the United States Treasury and payments therefrom on account of "Claim of the Orinoco Corporation against Venezuela," (hereinafter called the "Orinoco Corporation Indemnity Fund").

The protocol of settlement of the claim of the Orinoco Corporation, signed September 9, 1909, on behalf of the United States and Venezuela, provided for a payment for the benefit of the Orinoco Corporation and its three predecessors of $385,000 in eight equal installments of $48,125, payable annually.

The total amount has been paid into the Treasury as follows:

Date of warrant covering payment into U. S. Treasury.	Amount of annual payment by Venezuela.
September 30, 1909	$48,125
September 30, 1910	48,125
September 30, 1911	48,125
September 30, 1912	48,125
September 30, 1913	48,125
October 31, 1914	48,125
4 (Deposited October 24.)	
September 30, 1915	48,125
September 30, 1916	48,125
Total	$385,000

The total payments by the United States Treasury from the fund received from Venezuela have been as follows:

Date of pay warrant.	To whom paid.	Amount.
June 28, 1911.	R. Dolge, Trustee, etc.	$70,263.97
do.	R. Dolge, Atty. in fact for Manuel Antonio Ponce, et als.	2,000.00
Oct. 25, 1911.	John W. Le Crone, Receiver, etc.	17,449.70
do.	Department of State	6,536.33
Dec. 13, 1911.	R. Dolge, Atty. in fact for Manuel Antonio Ponce, et als.	1,000.00
Oct. 11, 1912.	Harry Metzel, Trustee, etc.	37,750.00
Dec. 10, 1912.	R. Dolge, Atty. in fact for Manuel Antonio Ponce, et als.	1,000.00
Jan. 9, 1914.	Manuel Antonio Ponce, et als.	1,000.00
Dec. 23, 1914.	" " " " "	1,000.00
Oct. 14, 1915	" " " " "	1,000.00
Oct. 21, 1916.	" " " " "	1,000.00
Dec. 28, 1917.	Harry V. Metzel, Trustee, etc.	188,750.00
Total		$328,750.00
Balance to credit of fund March 11, 1918		56,250.00
		$385,000.00

The said balance of $56,250 is a subject to awards made by the Secretary of State, for which certificates have been issued by him, as follows:

Number of certificate.	Date.	To whom payable.	Amount.
2333.	Aug. 28, 1912.	John W. Le Crone, Receiver of the Orinoco Company, Limited..	$9,375.00
2516.	May 5, 1917.	do. ..	46,875.00
			$56,250.00

Treasury Department, March 11, 1918.

Two. This respondent further says that he is informed and believes and therefore charges the fact to be that on June 30, 1911, one William M. Safford filed his bill of complaint on the Equity side of the Supreme Court of the District of Columbia, and that the cause is entitled William M. Stafford vs. Franklin MacVeagh et al., which cause is Equity No. 30,289, upon the docket of said Court. And this respondent further says that he is informed and believes and therefore charges the fact to be that the said John W. Le Crone, Receiver of the Orinoco Company, Limited, has, in said Equity Cause No. 20,289, answered to the merits and thereby submitted himself and his cause of action fully to the jurisdiction of the Supreme Court of the District of Columbia sitting in Equity for final determination, and that said cause is now pending on the Equity side of the Supreme Court of the District of Columbia.

Three. This respondent further says that he is informed and believes and therefore charges the fact to be that on November 13, 1914, The Orinoco Iron Company filed its bill of complaint on the Equity side of the Supreme Court of the District of Columbia, which cause in said Court is Equity No. 33031, and in which cause the said John W. Le Crone, Receiver of The Orinoco Company, Limited, is one of the defendants, and that in said cause the said John W. Le Crone, Receiver of The Orinoco Company, Limited, has pleaded to the merits and has submitted himself fully to the jurisdiction of the Supreme Court of the District of Columbia, sitting in Equity, for a determination of the issues therein involved, and that said cause is now pending on the Equity side of the Supreme Court of the District of Columbia.

Four. This respondent further says that he is informed and believes and therefore charges the fact to be that the fund concerning which the said John W. Le Crone, Receiver of The Orinoco Company, Limited, in this proceeding seeks to obtain payment of a portion thereof is involved in the two Equity proceedings, hereinbefore in this answer referred to.

Five. This respondent further says that he is informed and believes and therefore charges the fact to be that the said John W. Le Crone, receiver of the Orinoco Company, Limited, on May 12, 1913, filed on the Law side of the Supreme Court of the District of Columbia

a petition for mandamus against this respondent, Law cause No. 55,774, wherein he prayed that the sum of $9,375, which is a part of the said sum of $56,250, which he now seeks by this proceeding to obtain from this respondent, and this respondent further says that he is informed and believes and therefore charges the fact to be that on the 14th day of June, 1913, the said John W. Le Crone, Receiver of The Orinoco Company, Limited, dismissed the said mandamus proceeding.

This respondent further answering the rule to show cause issued herein says that the foregoing averments show that the adverse claimants to the fund in controversy (who have not been made parties to this mandamus proceeding, and have not consented to the adjudication and determination of their rights in this proceeding), have asserted their claims to the said fund in said Equity Causes Nos. 30289 and 33031, on the Equity side of the Supreme Court of the District of Columbia, and that the said John W. Le Crone, Receiver of The Orinoco Company, Limited and this respondent are parties to both of said Equity Causes Nos. 30289 and 33031, and that the rights of the respective parties claimant have not been finally determined and adjudicated, and therefore, this respondent says that this Honorable Court is without jurisdiction to proceed further in this matter and should *remit* the said petitioner, John W. Le Crone, to proceed in the said Equity causes, wherein the rights of all the parties claimant may be passed upon and finally and conclusively adjudicated, in order that this respondent, upon final and unreversed decree, may make proper payment and disbursement of the said fund with entire safety to the United States.

6

And having fully answered the rule to show cause, this respondent prays that the petition be dismissed, the rule to show cause discharged, and that this respondent may go hence with his reasonable costs and charges.

W. G. McADOO,
Secretary of the Treasury.
F. A. R.

JOHN E. LASKEY,
United States Attorney, D. C.

DISTRICT OF COLUMBIA, *To wit:*

I, W. G. McAdoo, Secretary of the Treasury, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of personal knowledge are true, and those made upon information and belief, I believe to be true.

W. G. McADOO.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 13" day of March, A. D., 1918.

WILLIAM J. MARTIN, [SEAL.]
Notary Public, D. C.

Demurrer.

Filed March 25, 1918.

* * * * * * *

Now comes the petitioner in the above entitled cause and demurring to the answer of the defendant filed herein, says that the same is bad in substance.

The following points of law will be argued in support of this demurrer:

I.

That this court has no power to enjoin the defendant from paying the certificates of the Secretary of State mentioned in the pleadings.

7

II.

That if it might exercise that jurisdiction in any case, it cannot exert it and make any valid decree against the Petition in the suits mentioned in the answer, because:

1. It does not appear that it has obtained jurisdiction of him.

2. It does not appear that the consent of the Minnesota court of appointment of the petitioner as receiver, to institute such suits, or either of them, has been procured.

3. It appears that the jurisdiction of the Secretary of State to distribute the Indemnity Fund under the Act of Congress of February 27, 1896, has been exercised by him and that he has determined that the receiver (petitioner) is entitled to receive the funds in controversy in this proceeding and has issued to him the corresponding certificates in conformity with the provisions of that Act.

We shall argue that such jurisdiction was exclusive and whether so or not, that it became exclusive when he had assumed and exerted it; that his said determination has the conclusive effect of a judgment of a court of record, and cannot be attacked collaterally, and that in consequence of the premises, it became and is the duty of the defendant to make the demanded payment, and that mandamus is our only remedy to enforce compliance with the law.

4. It appears that the jurisdiction of the Minnesota court to administer the assets of the Orinoco Company, Limited, had attached before either of such suits had been commenced here, and thereby became exclusive.

5. It does not appear that the payment of the certificates will occasion irreparable (or any) injury to the petitioners or interveners in those suits, as they may (and must) resort to the Minnesota court

to assert any rights, if any they have, to the funds in the hands of the receiver of that court.

6. It does not appear that any or either of the bills or interventions in these suits state facts entitling the proponents to any right, title or interest in the funds allotted to the receiver by the Secretary of State.

III.

That the proposition, which is the essential basis of the answer, in its last analysis, that any person may by instituting a suit or suits against the Secretary of the Treasury and the appropriatee, hold up an appropriation made by an Act of Congress as long as such suit or suits can be kept in existence, would, if adopted as a rule by this court, probably lead to the most serious consequences, especially in instances where, as in these suits, no undertaking or other security has been given. We shall argue against the establishment of such a rule in this case in this court.

IV.

That the intimation in the answer that if the defendant should pay these certificates, the Government might be exposed to
8 suits by the plaintiffs and interveners in the pending suits mentioned therein, is refuted by the text of the statutes which confer jurisdiction on the courts of suits against the United States (U. S. St. at L. Sec. 1093 and 1136), and we shall argue that it is evident that no suit can be maintained against the Government unless it is founded on the Constitution, an Act of Congress, a Regulation of an Executive Department, or a contract with the United States.

And that if such suit could be maintained, no substantial damages could be recovered, in view of the fact that by the transfer of the funds to the registry of the Minnesota court, the claimants against the same would be deprived of no rights against such funds.

V.

We also intend to argue, if the court please, that if this petition is granted, the wrongs suffered by the petitioner occasioned by the consequences, of these suits will be righted as far as now possible; the Act of Congress of February 27, 1896 will be respected; and no detriment will come to any interest, public or private.

McLANAHAN & BURTON,
GEO. N. BAXTER,
Attorneys for Petitioner.

To John E. Laskey, Esquire, Attorney for Defendant:

Please take notice that the foregoing demurrer will be set down to be heard on Friday, March 29, 1918, at 10:00 o'clock, and will be heard at said time, or as soon thereafter as counsel may be heard.

McLANAHAN & BURTON,
GEO. N. BAXTER,
Attorneys for Petitioner.

Receipt of a copy of the foregoing acknowledged this 25th day of March, A. D. 1918.

JOHN E. LASKEY,
U. S. Att'y, D. C.

Order Overruling Demurrer and Dismissing Petition.

Filed April 5, 1918.

* * * * * * *

This cause coming on to be heard this day upon the petition of John W. Le Crone, Receiver of The Orinoco Company, Limited, and the rule to show cause issued on the 28th day of February, 1918, and the answer of William G. McAdoo, Secretary of the Treasury, respondent to the rule to show cause issued on February 28, 1918, and the demurrer thereto of John W. Le Crone, Receiver of The Orinoco Company, Limited, and the case having been argued to the Court, and the Court being fully informed in the premises, it is this 5th day of April, 1918,

Ordered, That the said demurrer of the said John W. Le Crone, Receiver of The Orinoco Company, Limited, be, and the same is, hereby overruled, and the said Le Crone, electing to stand upon his said demurrer, the application of the said John W. Le Crone for a writ of mandamus is hereby denied, the petition dismissed, and the rule to show cause discharged, with costs against the petitioner.

By the Court:

ASHLEY M. GOULD,
Justice.

Appeal to the Court of Appeals noted in open court. Appeal bond $50.

ASHLEY M. GOULD.

Memorandum.

April 18, 1918.—$50 deposited in lieu of bond on appeal by leave of Court.

Assignment of Errors.

Filed April 23, 1918.

* * * * * * *

The Petitioner having appealed to the Court of Appeals of said District from the Order entered in said cause April 5th, 1918, over-

ruling petitioner's demurrer to the answer of the defendant and dismissing the petition; the appellant assigns as errors relied on by him; as follows:

1. The court erred in making said Order.

2. The court erred in overruling said demurrer.

3. The court erred in dismissing said petition.

4. The court erred in discharging the Rule to show cause issued on said petition.

Wherefore petitioner prays reversal of said Order.

McLANAHAN & BURTON AND
GEO. N. BAXTER,
Attorneys for Petitioner.

Dated April 23rd, 1918.

Designation of Record.

Filed April 23, 1918.

* * * * * * *

The Clerk of said Court will please certify the record in the above entitled cause on appeal to the Court of Appeals of the District of Columbia; that is to say:

10 All of said record except the Rule to show cause; the Order allowing deposit of cash in lieu of a bond on Appeal; and this designation.

With all convenient speed.

McLANAHAN & BURTON &
GEO. N. BAXTER,
Attorneys for Petitioner-Appellant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 61058 at Law, wherein John W. Le Crone, Receiver of the Orinoco Company, Limited, is Plaintiff and William G. McAdoo, Secretary of the Treasury, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 4th day of May, 1918.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3182. John W. Le Crone, Receiver of The Orinoco Company, Limited, appellant, vs. William G. McAdoo, Secretary of the Treasury. Court of Appeals, District of Columbia. Filed May 4, 1918. Henry W. Hodges, clerk.

11 Thursday, October 17th, A. D. 1918.

No. 3182.

JOHN W. LE CRONE, Receiver of the Orinoco Company, Limited, Appellant,

vs.

WILLIAM G. MCADOO, Secretary of the Treasury.

The above entitled cause was submitted to the consideration of the Court on the printed record and briefs filed herein by Mr. Arthur R. Colburn, attorney for the appellant, and by Messrs. J. E. Laskey and H. W. Sohon, attorneys for the appellee.

12 In the Court of Appeals of the District of Columbia.

No. 3182.

JOHN W. LE CRONE, Receiver of the Orinoco Company, Ltd., Appellant,

vs.

WILLIAM G. MCADOO, Secretary of the Treasury.

Opinion.

Mr. Chief Justice Smyth delivered the opinion of the Court:

The appellant is the receiver of the Orinoco Company, Limited, having been appointed by a Minnesota court. As such receiver he claimed a fund of $56,250 in the hands of the Secretary of the Treasury and applied to the lower court for a mandamus to compel its payment to him. The Secretary answered that the fund was claimed by two other parties in suits commenced by them on the equity side of the Supreme Court of the District; that the appellant

had answered to the merits in those cases, and that they were still pending. The Secretary further answered that he should not be required to pay out the fund until the controversy between the appellant and the plaintiffs in those suits was finally determined so that he might disburse it with entire safety to the United States. To this answer appellant demurred. The demurrer was overruled and the appellant refusing to plead further, his application for the writ was dismissed.

Appellant asserts in argument that the Supreme Court of the District, in the suits just mentioned, has no power to enjoin the Secretary of the Treasury from paying out the fund; that it does not appear that the court has jurisdiction of him as receiver; that the Minnesota court has exclusive control of the administration of the fund and that consent has not been given by that court to the institution of the equity suits.

The Supreme Court of the District is a court of general jurisdiction and has full power to dispose of all the questions raised by the appellant, or which we may hereafter raise, and to grant him complete relief with respect to every right which he may have to the fund in controversy. About this we do not understand that there is, or can be, any debate. Under these circumstances he is not entitled to the writ of mandamus. That writ is an extraordinary one and not to be resorted to except where there is no other legal remedy. In Moore v. United States, 33 App. D. C., 597, 602, the late Chief Justice of this court said:

"Nothing is better settled than that the writ of mandamus can not be * * * granted in any case where there is another adequate remedy."

(To the same effect are Seymour v. South Carolina, 2 App. D. C., 240, 245, Seymour v. Brodie, 10 App D. C., 567, 569). This is in harmony with the decisions of the Supreme Court of the United States in Re Key 189 U. S., 84, 85, and In Re Pennsylvania Company, 137 U. S., 451, 453.

The judgment of the court dismissing the petition is affirmed with costs. Affirmed.

13 Monday, November 4th, 1918.

October Term, 1918.

No. 3182.

JOHN W. LE CRONE, Receiver of the Orinoco Company, Limited, Appellant,

vs.

WILLIAM G. MCADOO, Secretary of the Treasury.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued

by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. CHIEF JUSTICE SMYTH,

November 4, 1918.

14 Court of Appeals of the District of Columbia.

JOHN W. LE CRONE, as Receiver, &c., Appellant,

against

WILLIAM G. McADOO, as Secretary, &c., Appellee.

Now comes the above named Appellant, John W. Le Crone, by his Attorneys, who say that said Appellant desires to obtain a Writ of Error to the Supreme Court of the United States in order to review the judgment of this court entered in the above entitled cause on the 4th day of November A. D. 1918.

Appellant respectfully prays that said Writ be allowed, and that the amount of the security required to be given therein be fixed.

Appellant requests that the bond herewith presented be approved and the said Writ and corresponding Citation be signed.

Appellant presents herewith his Assignment of Error and prayer for reversal.

JOHN W. LE CRONE,
By GEO. N. BAXTER,
His Attorneys.

To the Honorable the Chief Justice and Associate Justices of said Court.

(Endorsed:) No. 3182. John W. Le Crone &c., Appellant vs. William G. McAdoo, Secretary of the Treasury. Motion for allowance of writ of error to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Jan. 25, 1919. Henry W. Hodges, Clerk.

15 Saturday, January 25th, A. D. 1919.

No. 3182.

JOHN W. LE CRONE, Receiver of the Orinoco Company, Limited, Appellant,

vs.

WILLIAM G. McADOO, Secretary of the Treasury.

On consideration of the motion for the allowance of a writ of error to remove the above entitled cause to the Supreme Court of

the United States, It is by the Court this day ordered that said motion be and the same is hereby denied.

16 To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

This Petition of John W. Le Crone, as receiver of the Orinoco Company Limited, respectfully represents and shows, as follows:

February 12th, 1918, he presented to the Supreme Court of the District of Columbia his petition praying for a writ of mandamus to be directed to William G. McAdoo, as Secretary of the Treasury of the United States, commanding him to pay certain certificates mentioned and described in said petition, for the payment of $56,250, which had been issued and delivered, as alleged in said petition, by the Secretary of State to petitioner, as such receiver, under and pursuant to the provisions of the Act of Congress approved Feb. 27th, 1896, and afterwards, on the 11th day of May, 1917, duly presented by petitioner to the Secretary of the Treasury for payment and payment thereof refused.

The answer of the defendant to said petition admitted the allegations thereof and alleged as the sole excuse for such refusal to pay, thta there was then pending in said court two suits wherein the petitioner, as such receiver and the defendant, as such Secretary, were impleaded as parties defendant, in which the plaintiffs therein "asserted claims" to the fund which petitioner sought to obtain by means of said mandamus proceeding.

The petitioner demurred to said answer upon the ground that it was bad in substance.

Afterwards, on April 5th, 1918, said demurrer was overruled and judgment entered in said court dismissing the petition.

Afterwards, on April 23rd, 1918, petitioner appealed to the Court of Appeals of the District of Columbia; which court, by its judgment entered Nov. 4th, 1918, affirmed the said judgment of the Supreme Court.

The matter in dispute in said mandamus case is the right of petitioner to receive payment of the $56,250 expressed in his said
17 certificates.

The jurisdiction of said Supreme Court is in issue in said suits, and in said mandamus proceedings, as your petitioner is advised by his counsel.

The duty of the Secretary of the Treasury to pay said certificates is drawn in question in said suits and mandamus proceedings.

Wherefore your petitioner prays that a Writ of Error may issue and that he may bring up for review said judgment of said Court of Appeals before the Supreme Court of the United States.

JOHN W. LE CRONE,
Petitioner.

By GEO. N. BAXTER,
His Attorney.

DISTRICT OF COLUMBIA, *ss:*

Geo. N. Baxter, being first duly sworn, deposes and says that he has read the foregoing petition, and that the facts stated therein are true of his own knowledge.

GEO. N. BAXTER.

Subscribed and sworn to before me this 27th day of Jan'y 1919.

ALBERT HARPER, [NOTARIAL SEAL.]
Notary Public. [L. S.]

Approved Jan'y. 1919.

(Endorsed:) No. 3182. John W. Le Crone, Plaintiff in Error, vs. William G. McAdoo. Petition for Writ of Error. Court of Appeals, District of Columbia. Filed Feb. 3, 1919. Henry W. Hodges, Clerk.

18 Supreme Court of the United States.

JOHN W. LE CRONE, as Receiver, &c., Plaintiff in Error,

against

WILLIAM G. MCADOO, as Secretary, &c., Defendant in Error.

And now comes John W. Le Crone, plaintiff in error, and makes and files this his Assignment of Errors.

1. The Supreme Court of the District of Columbia, being of opinion that that Court had jurisdiction, in the suits mentioned in the Answer of the defendant to the Petition of the plaintiff for a Writ of Mandamus, to determine to whom the Fund in controversy in said suits was due and payable, and to restrain the defendant Secretary of the Treasury from paying the same the petitioner there, (Plaintiff in Error here) entered its judgment dismissing said Petition.

The Court of Appeals of the District of Columbia erred in affirming that judgment.

2. The said Supreme Court by its said judgment determined that it had authority in said suits to revise and reverse the determination of the Secretary of State adjudging and ordering payment of that Fund to said Le Crone, as Receiver.

The said Court of Appeals erred in its judgment affirming that said Supreme Court had such authority.

3. The said Supreme Court by its said judgment determined that that court had jurisdiction to entertain such suits and make decrees therein against said Le Crone depriving him of said Fund, without the consent of the Minnesota court, by which he had been appointed such receiver.

The said Court of Appeals erred in affirming, as it did by its judgment, that said Supreme Court had jurisdiction in said suits to make such decrees.

19 4. The said Supreme Court determined by its said judgment that it had power in said suits, to restrain the Secretary of the Treasury from paying said fund to said Le Crone.

The said Court of Appeals erred in affirming, as it did by its judgment, that said Supreme Court possessed that power.

5. The said Court of Appeals erred in holding, as it did, that this plaintiff in error had an adequate remedy in said suits for the wrong complained of in his said petition for a writ of mandamus.

GEO. N. BAXTER,
Attorney for Plaintiff in Error.

(Endorsed:) No. 3182. John W. Le Crone, Plaintiff in Error vs. William G. McAdoo. Assignments of Error. Court of Appeals, District of Columbia. Filed Feb. 3, 1919. Henry W. Hodges, Clerk.

20 The Supreme Court of the United States.

JOHN W. LE CRONE, Receiver, &c., Plaintiff in Error,

against

WILLIAM G. McADOO, Secretary, &c., Defendant in Error.

To the Honorable, the Chief Justice and Associate Justices of said Court:

Now comes John W. Le Crone, the Plaintiff in Error, and prays for a reversal of the judgment of the Court of Appeals of the District of Columbia in the action brought in the Supreme Court of the District of Columbia by this plaintiff for a writ of mandamus against the defendant in error, William G. McAdoo, which judgment of the said Court of Appeals affirmed the judgment of the said Supreme Court of the District of Columbia in said action dismissing plaintiff's petition for such writ.

Which judgment of the said Court of Appeals this plaintiff in error prays may be reversed.

GEO. N. BAXTER,
Attorney for Plaintiff in Error.

Dated Jan'y —, 1919.

(Endorsement:) No. 3182. John W. Le Crone, Plaintiff in Error, vs. William G. McAdoo. Prayer for Reversal. Court of Appeals, District of Columbia. Filed Feb. 3, 1919. Henry W. Hodges, Clerk.

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between John W. Le Crone, as receiver of the Orinoco Company Limited, Appellant; and William G. McAdoo, as

Secretary of the Treasury, Appellee, a manifest errer hath happened, to the great damage of the said appellant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of February, in the year of our Lord one thousand nine hundred and nineteen.

[Seal of the Supreme Court of the United States.]

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed February 1, 1919.
WILLIS VAN DEVANTER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Court of Appeals, District of Columbia. Filed Feb. 3, 1919. Henry W. Hodges, Clerk

22 Court of Appeals of the District of Columbia.

JOHN W. LE CRONE, Appellant,

against

WILLIAM G. MCADOO, Appellee.

Know all men by these presents;—That we, John W. Le Crone, of Faribault in the County of Rice in the State of Minnesota, receiver of the Orinoco Company Limited, as principal, and Chas. F. Ebel and Frank M. Kaisersatt of the same place, as sureties, are jointly and severally held and firmly bound unto William G. McAdoo in the penal sum of two hundred and fifty dollars, for the payment whereof we hereby bind ourselves and our and each of our heirs, executors, administrators and assigns, joint- and severally firmly by these presents.

Sealed with our seals and dated this 14th day of January 1919.

Whereas the above bounden John W. Le Crone is about to sue out a Writ of Error from the judgment entered in the above entitled cause in said Court of Appeals on the 4th day of November 1918,

to remove the said judgment to the Supreme Court of the United States for review;—

Now therefore the condition of the foregoing obligation is such, that if said Le Crone shall prosecute said writ with effect and, if he shall fail to make his plea good, shall answer all costs, then this obligation shall be void; otherwise of full force and effect.

JOHN W. LE CRONE. [L. S.]
CHAS. F. EBEL. [L. S.]
FRANK M. KAISERSATT. [L. S.]

Done in the presence of,—
HOLISON Y. LAURIE,
J. F. LINELEMAN.

STATE OF MINNESOTA,
Rice County, ss:

Be it remembered that on this 14th day of January A. D. 1919, before me personally appearing, came John W. Le Crone and Chas. F. Ebel and Frank M. Kaisersatt who executed the foregoing
23 bond, and acknowledged the same to be their free act and deed.

Witness my hand and official seal.

[Seal of County Auditor, Rice County, Minn.]

[L. S.] BEN J. SHIMOTA,
Deputy Auditor, Rice County, Minn.

STATE OF MINNESOTA,
Rice County, ss:

Chas. F. Ebel and Frank M. Kaisersatt being first duly sworn, each for himself, deposes and says that he is a resident and freeholder of and within the State of Minnesota, and worth the sum of five hundred dollars over and above all his debts and liabilities, and exclusive of his property exempt from execution.

CHAS. F. EBEL.
FRANK M. KAISERSATT.

Subscribed and sworn to before me this 14th day of January 1919.

[Seal of County Auditor, Rice County, Minn.]

[L. S.] BEN J. SHIMOTA,
Deputy Auditor, Rice County, Minn.

(On margin of bond:) Bond Approved, February 1, 1919, Willis Van Devanter, Associate Justice.

[Endorsed:] No. 3182. John W. Le Crone, Plaintiff in Error vs. William G. McAdoo. Bond on Writ of Error. Court of Appeals,

District of Columbia. Filed Feb. 3, 1919. Henry W. Hodges, Clerk.

24 UNITED STATES OF AMERICA, *ss:*

To William G. McAdoo, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the United States (and of the Court of Appeals of the District of Columbia), wherein John W. Le Crone, as receiver of the Orinoco Company Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this third day of February, in the year of our Lord one thousand nine hundred and nineteen.

WILLIS VAN DEVANTER,
Associate Justice of the Supreme Court of the United States.

On this — day of February, in the year of our Lord one thousand nine hundred and nineteen, personally appeared —— —— before me, the subscriber, and makes oath that he delivered a true copy of the within citation to John E. Laskey, Esq., Attorney for the within named William G. McAdoo.

Sworn to and subscribed the — day of Feb'y, A. D. 1919.

—— ——.

Service of the within Citation is hereby admitted this 3rd day of February 1919.

JOHN E. LASKEY,
U. S. Att'y, D. C.,
Att'y for Appellees.

[Endorsed:]

Supreme Court of the United States.

John W. Le Crone, Plaintiff in Error,

vs.

Wiliam G. McAdoo, Defendant in Error.

Citation and Proof of Service.

Court of Appeals, District of Columbia.

Filed Feb. 3, 1919.

Henry W. Hodges,
Clerk.

25 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 24, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of John W. Le Crone, Receiver of the Orinoco Company, Limited, Appellant, vs. William G. McAdoo, Secretary of the Treasury, No. 3182, October Term, 1918, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 11th day of February, A. D. 1919.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 26,957. District of Columbia Court of Appeals. Term No. 304. John W. Le Crone, Receiver of The Orinoco Company, Limited, plaintiff in error, vs. William G. McAdoo, Secretary of the Treasury. Filed February 20th, 1919. File No. 26957.

Office Supreme Court, U. S.
FILED
JAN 30 1920
JAMES D. MAHER,
CLERK.

No. 304.

Supreme Court of the United States

OCTOBER TERM, 1919.

JOHN W. LeCRONE, Receiver of the Orinoco Company, Limited,
Plaintiff in Error,

versus

WILLIAM G. McADOO, Secretary of the Treasury,
Defendant in Error.

In Error to the Court of Appeals of the District of Columbia.

Brief for Plaintiff in Error.

GEO. N. BAXTER,
Attorney for Plaintiff in Error.

COURT INDEX PRESS, 646-650 Main street, Cincinnati, O., January, 1920.

Supreme Court of the United States

OCTOBER TERM, 1919.

JOHN W. Le CRONE, Receiver of the Orinoco Company, Limited,
Plaintiff in Error,

No. 304. *vs.*

WILLIAM G. McADOO, Secretary of the Treasury,
Defendant in Error.

In Error to the Court of Appeals of the District of Columbia.

Brief for Plaintiff in Error.

STATEMENT OF THE CASE.

By the Act of Congress, approved February 27, 1896, it is statute and ordained, as follows:

> "That hereafter all moneys received from foreign governments * * * in trust for citizens of the United States shall be deposited and covered into the treasury.
>
> The Secretary of State shall determine the amounts due claimants respectively from each of such trust funds and certify the same to the Secretary of the Treasury, who shall, upon the

presentation of the certificates of the Secretary of State, pay the amounts so found due.

Each of the trust funds covered into the treasury as aforesaid is hereby appropriated for the payment to the aforesaid beneficiaries thereof, of the certificates herein provided for."

The moneys received under the Protocol of September 9, 1909, entered into between our government and that of the United States of Venezuela (p. 2 of record) were deposited and covered into the treasury in accordance with the provisions of the Act of Congress (p. 2 of record) and the Secretary of State, having determined that there was due to plaintiff in error $75,000 therefrom, and having certified the same to the Secretary of the Treasury accordingly, this plaintiff presented his certificates to him for payment, which was refused. (p. 3 of record.)

Thereupon this plaintiff filed his petition in the Supreme Court of the District of Columbia against said Secretary, in which he prayed that a writ of mandamus be issued commanding him to pay such certificates, and that petitioner recover his damages and costs. (p. 3 of record.)

The Secretary answered the petition, alleging as his defense the pendency in said court of suits against him and petitioner in which the plaintiffs "asserted their claims to the said fund." (pp. 3, 4, 5, 6, of record.)

The petitioner demurred to the answer, saying that it was bad in substance. (pp. 7-8.)

The demurrer was overruled and the petition dismissed.

The court of appeals affirmed such judgment, and the case comes here upon writ of error.

The question involved is whether or not it was the *duty* of the Secretary of the Treasury to pay the certificates upon presentation.

The Code of the District of Columbia, "Mandamus:" (Section 1278) provides that:

> "if a verdict be found for petitioner, or judgment be given for him upon demurrer, or for want of a plea, said petitioner shall thereupon recover his damages and costs * * * to be levied by execution, and a peremptory writ of mandamus shall be granted."

If it was the duty of the Secretary of the Treasury to make such payment, the petitioner was entitled to the writ, *and* to recover his damages for the illegal detention of the funds.

SPECIFICATION OF ERRORS.

1. The Supreme Court below, being of opinion that it had jurisdiction in said suits to determine to whom the fund in controversy was due and payable, dismissed the above mentioned petition.

The Court of Appeals erred in affirming that judgment.

2. The said Supreme Court determined that it had authority in said suits to revise and reverse the determination of the Secretary of State that the fund was due to the petitioner.

The Court of Appeals erred in affirming that said Supreme Court had such authority.

3. The said Supreme Court determined that it had jurisdiction to entertain said suits and make decrees therein depriving the receiver of such fund, without the consent of his court.

The Court of Appeals erred in affirming such determination of the Supreme Court.

4. The said Court of Appeals erred in holding, as it did, that this plaintiff had an adequate remedy in said suits for the wrongs complained of in his petition.

BRIEF OF ARGUMENT.

The Court of Appeals was of opinion that the Supreme Court of the District (sitting in equity) had full power to grant the plaintiff in error complete relief with respect to every right which he had to the fund in controversy (p. 12 of record.)

We contend that it had no power to make any order or decree whatever in such suits, as it was, as we will show, without jurisdiction of this plaintiff or of the subject-matter of such suits.

The Supreme Court of the District of Columbia had no jurisdiction in those suits of the defendant receiver, as he was sued without the consent of his court, and the object of such suits was to deprive him of property he was appointed to receive.

Barton v. *Barbour*, 104 U. S., 126; 128-9; 131; 136-7.
Comer v. *Felton*, 61 Fed. R., 731-735 (C.C.A.).
Porter v. *Sabin*, 149 U. S., 473, 478-79-80.
Shields v. *Coleman*, 157 U. S., 168, 177.
Minot v. *Mastin*, 37 C. C. A., 234-237.

In *Comer* v. *Felton* it is said by Mr. Justice Lurton—

> "The court appointing a receiver draws to itself all controversies over the *res*, and will not, without leave, permit any other court to disturb the possession of its receiver. * * * Any judgment of another court affecting the receivers right of possession should be held null and void."

"This rule is not limited to the property actually in the receiver's possession, but extends to property he has been appointed to receive, but which has not yet come into his possession."

High on Receivers (4th Ed.), Secs. 139-43-54.

It is not alleged in the answer, that such consent had been obtained, and it will not be presumed.

"Every pleader states his case as favorably to himself as he is able to do."

Stephen v. *Beall,* 22 Wall., 329-39.

"When a pleading is susceptible of two meanings, that shall be taken which is most unfavorable to the pleader."

Clark v. *Dillon,* 97 N. Y., 371-73.
Lovell v. *DeBardeleban,* 90 Ala., 13-15.

A bill in a suit against a receiver is demurrable unless it alleges that the suit is brought with the consent of the court by which he was appointed.

Porter v. *Kingman,* 126 Mass., 141-2.

There is no allegation in the answer that the receiver had assigned his rights to the fund to the plaintiffs, nor that their bills alleged that to be the fact; nor that there was any ground existent or alleged for questioning the *validity* of the adjudication of the Secretary of State. That there was such assignment or ground is not to be presumed.

The receiver was undoubtedly an indispensible party to such suits, and the rule is:

"If the court can not, for any reason, reach or exercise jurisdiction over an indispensible party, the suit will be dismissed."

Street's Fed. Eq. Pr., Secs. 520-22.
Ribon v. *Railroad Co.*, 16 Wall., 446-50.

It is and was evident that no decree could be made in such suits establishing the rights which the plaintiffs "asserted" therein to the fund, and depriving this plaintiff of his right thereto.

But if the said Supreme Court had jurisdiction of the receiver, it had no jurisdiction of the subject-matter, and therefore could have made no valid order or decree against either of the defendants therein.

The jurisdiction of the Secretary of State to determine to whom the fund was due, was exclusive.

Great W. Ins. Co. v. *U. S.*, 112 U. S., 193-200.
Alling v. *U. S.*, 114 U. S., 562-564.
Foster v. *U. S.*, 32 Ct. Cl., 170, 186-7.

Funds of this character were the property of the United States and it could dispose of them as it saw fit. No one had any right to them which could be asserted in any court.

Rustomje v. *Queen*, Vol. 1 Q. B. D., 489.
Williams v. *Heard*, 140 U. S., 529, 37-8.

The Act of February 27, 1896, gave a *right* to such funds to the claimants to whom the Secretary of State determined they were due. By that Act the United States covenanted to stand seized of the fund to the use

of the so determined "beneficiaries" of the trust, and not to another or others.

The remedy for the realization of that right was given by that statute.

Where a right is given by a statute and the same statute prescribes a remedy, such remedy is exclusive.

Supervisors v. *Albany*, 9 Paige, 182-3-6.
Brown on Jurisdiction, Sec. 23, note 2.

DeBode v. *The Queen*, 3 Clarke, H. L. C., 449; 467-8-9, was a case where an indemnity fund was recovered by the government of Great Britain from France on account of injuries to British subjects. Under an Act of Parliament a Commission was appointed to determine to whom it should be distributed. DeBode's claim was rejected, not on the merits, but because he had not registered in accordance with the requirements of the Act.

He brought his suit to establish his right to share in the fund. It was held that he had no remedy except under the provisions of the Act.

From the beginning and without exception funds of this nature have been administered by the Secretary of State or by Commissions created by Congress for that purpose, and never by the courts of ordinary jurisdiction.

Even if the Supreme Court of the District of Columbia had jurisdiction, concurrent with that of the Secretary of State to determine to whom such funds were due, it could not exercise it after the Secretary had assumed and exercised his jurisdiction in the premises.

Works on Jurisdiction, 68.
High on Receivers (4th Ed.), Sec. 50.

If the plaintiffs in those suits had or have any right which can be asserted by them against the fund, they may intervene *pro intresse suo* in the Minnesota court for the purpose of establishing the same.

> "When a court exercising jurisdiction in equity appoints a receiver of the property of a corporation, the court assumes the administration of the estate * * * for the benefit of those to whom the court shall ultimately adjudge to be entitled to it."
>
> *Porter* v. *Sabin,* 149 U. S., 473, 479.
> *High on Receivers* (4th Ed.), Sec. 139.
> *2 Street's Fed. Eq. Pr.,* Secs. 1365-70.
> *Simpkins' Fed. Suit in Eq.,* 458.

The right to intervene is absolute in cases where a party claims a right to a fund which is in court for purposes of distribution.

> *Credits Co.* v. *U. S.,* 177 U. S., 311-16.
> *Minot* v. *Mastin,* 37 C. C. A., 238-9.

The answer to our petition intimates that the Secretary could not make payment to petitioner "with entire safety to the United States." (See p. 6 of Record.) This apprehension is unfounded, as it is not averred or intimated that plaintiffs have any claim to the fund based on the Constitution; an Act of Congress, a Regulation of an Executive Department, or upon a contract with the United States, or any claim within the purview of the statutes which give the right to maintain a suit against the government.

> 36 St. at Large, Sec. 1093.
> R. S. U. S., Sec. 1059.

Even if they could maintain such suits, they could not recover substantial damages, as such payment would not, as we have shown, deprive them of their right to assert their claims in the proper forum.

Even if they could recover substantial damages, the Act of Congress must be carried into execution and payment of the certificates made accordingly. *Ita lex scripta est.* The courts are not responsible for the consequences. "The wisdom of a statute is not a judicial question, nor can the courts relieve against the occasional harsh operation of statutory provisions."

Sutherland on Statutory Con., Sec. 237.

> "Where the meaning is plain and the law is within the constitutional authority of the law-making body, the sole function of the court is to enforce it in accordance with its terms."
>
> *Caminetti* v. *U. S.,* 242 U. S., 470, 485.

The proposition upon which the answer is predicated, that anybody can hold up an appropriation by merely instituting a suit against the Secretary of the Treasury and the appropriatee, asserting a right to the appropriated fund, and so deprive him of the moneys as long as the siut can be kept on foot, if adopted by the courts as a rule, would become a license to extortion and blackmail. Its consequences would be intolerable.

The very gist of the answer interposed to our petition in the District Court, was that the plaintiffs in the suits there, "asserted their claims to said fund." We have

shown that originally they had no claims against the fund that could have been "asserted" in any court. (*Williams* v. *Heard*, 140 U. S.) and they could not have *obtained* such right by the "determination" of the Secretary of State that the fund was "due" to others.

Therefore it follows that when they commenced their suits, all possibility of asserting and maintaining such claims had been extinguished. The answer was bad in substance, our demurrer was well taken, and it was error to have dismissed our petition.

Respectfully submitted,

GEO. N. BAXTER,

Attorney for Plaintiff in Error.

FILED
APR 17 1920
JAMES D. MAHER
CLERK

No. 304

Supreme Court of the United States

October Term 1919.

John W. LeCRONE, Receiver of the Orinoco Company, Limited,

Plaintiff in Error,

versus

WILLIAM G. McADOO, Secretary of the Treasury,

Defendant in Error.

In Error to the Court of Appeals of the District of Columbia.

Reply Brief for Plaintiff in Error.

GEO. H. BAXTER,
Attorney for Plaintiff in Error.

Court Index Press, 646-650 Main street, Cincinnati, Ohio, April, 1920.

Supreme Court of the United States

October Term: 1919.

JOHN W. LeCRONE, Receiver, etc.
Plaintiff in Error,

No. 304. *vs.*

WILLIAM G. McADOO, Secretary, etc.
Defendant in Error.

Reply Brief for Plaintiff.

The points made in defendants brief are as follows:

1. That plaintiff, being a receiver appointed by a Minnesota court, had no capacity to institute his action in the Supreme Court of the District of Columbia.

2. That such suit abated by the resignation of defendant, and the failure of plaintiff to obtain an order allowing the same to be maintained against his successor under the Act of February 8, 1899.

3. That plaintiff had an adequate remedy in the suits pending in that court against him and the defendant and could not resort to mandamus:

4. That the statutes of Minnesota allow a suit to be brought against a receiver without obtaining the consent of his court.

5. That payment of the certificates of the Secretary of State could not be made with safety to the United States while those suits were pending, and that therefore defendant was justified in refusing to pay such certificates by the pendency of such suits.

6. That the plaintiff here (defendant in said suits) did not object to the jurisdiction of the court below.

7. That the Act of February 27, 1896, does not direct the Secretary of the Treasury to pay the amounts by him found due to claimants respectively from such trust funds to any "particular person."

1. The objection that plaintiff had no legal capacity to sue, now brought forward, comes too late. That exception should have been asserted by a plea in abatement; and was waived by pleading to the merits.

Stephen on Pleading, Sec. 71.
Marshal v. *Otto*, 59 Fed. R., 249, 252.
Law Rule, No. —, S. C. D. C.
2 Abbott's Trial Brief: 1184-5.

2. Motions in the courts below for orders to substitute defendants successor, made within the year, were overruled, and would have served no useful purpose if they had been granted, as it would have been frustrated by the subsequent resignation of such successor and the recent appointment of the present incumbent. The substitution could not have been made in this court. (*U. S.* v. *Boutwell*, 17 Wall., 604-609.

We admit that if our action had been brought solely for the purpose of obtaining a writ of mandamus against the defendant, it would have abated by his resignation; and, as the present Secretary is not a party, no such relief can now be obtained in it. But the Code of the District of Columbia (Sec. 1278) allows the petitioner for

the writ to also recover in the same action the damages occasioned by defendant's breach of duty.

That right has not been lost by defendants resignation, and to the assertion of it in this case it is not necessary that the present Secretary should be impleaded as a defendant.

3. The Supreme Court below did not have "full power to dispose of all the questions raised by appellant * * * and to grant him complete relief with respect to every right he may have had to the fund in controversy" (Rec. p. 12) in the suits mentioned; because it had no jurisdiction of the **subject matter** sought to be litigated therein.

Those suits were brought by the complainants for the purpose of "asserting their claims" to the fund in question, which the Secretary of State, proceeding under the Act of Congress of Feb. 27, 1896, had determined was due to the petitioner and **others.**

That fund and the proposed distribution of it to the complainants instead of the petitioner, was the subject matter of such suits, in which the complainants were seeking to assert their alleged primordial rights thereto.

> "The subject matter of a suit is the cause, the object, the thing in dispute."
>
> "Jurisdiction is the power to hear and determine the subject matter; the power to deal with the subject involved in the suit."
>
> "Where exclusive jurisdiction of a subject matter is given to one court no other court can entertain such jurisdiction."
>
> Bailey on Jurisdiction, Sec's 1, 4.
> Works on Jurisdiction, pages 32, 68.

"Jurisdiction over the subject matter em-

braces the right to render the judgment or grant the relief prayed for."

Browne on Jurisdiction, Sec. 11.

"If a court does not have jurisdiction its judgments and orders are mere *nullities,* and may be declared void by every court in which they may be presented."

17 Am. & Eng. Enc. Law (2nd Ed.), 1046

In contemplation of law there were no such suits pending at any time in the court below. The proceedings there were *coram non judice* and lawless and had only the ■semblance of legal controversies. That court could have entered no valid judgment or decree against or in favor of any of the parties impleaded therein.

4. The Minnesota statute referred to, allowing suits against receivers to be brought without the consent of the court which appointed them, has no extra-territorial effect.

2 Lewis & Sutherland on Statutory Construction, Sec. 513.

5. We have shown in our original brief (p. 8) that if payment of the certificates is made in compliance with the Act of Congress, no action could be maintained against the United States in consequence.

6. Whether or not the receiver excepted to the jurisdiction of the Supreme Court below, is immaterial, as it had no *power* to deal with the subject matter of the suits against him, and his pleading to the merits without such objection would not confer jurisdiction upon it. That court could not entertain jurisdiction of the suits even if he had expressly consented.

7. The manifest intention of the Act of Congress of Feb. 27, 1896, is that the Secretary of State shall issue his certificates to the claimants to whom he shall determine the fund is due, as was done in this instance, and that payment accordingly should be made to them upon presentation of the certificates at the treasury. The appropriation is made for the payment of the certificates to the "aforesaid beneficiaries."

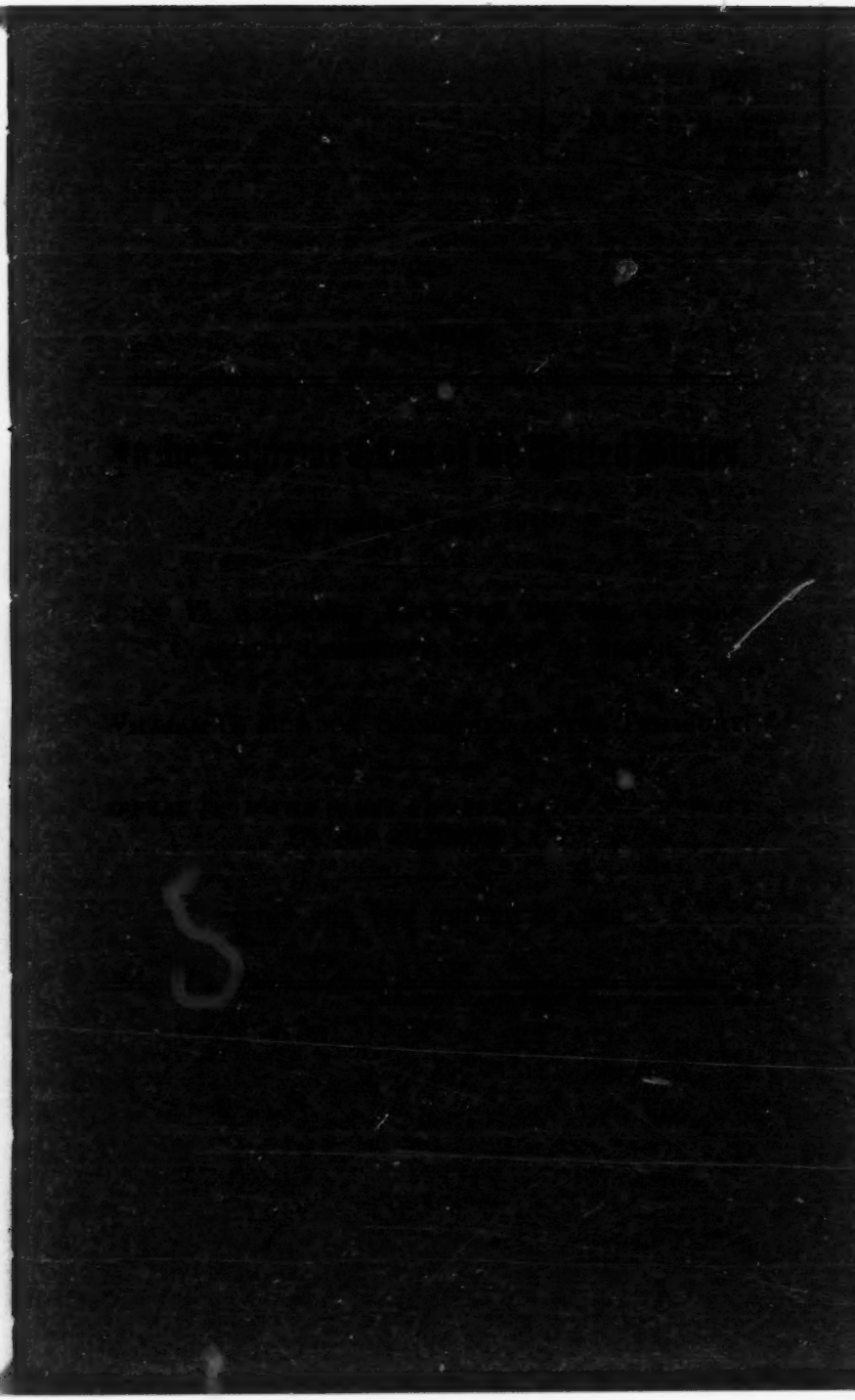
Bayard v. *White*, 127 U. S., 246, cited by defendant, was a case where there were conflicting claims to a fund, which had not been decided by the Secretary which were then in litigation in court. It was held that he was not *bound* to decide between such claims while the suit was pending. In this instance he had decided all the conflicting claims to this fund before the suits were brought, and had issued his certificates to the successful claimants. No decision that might now be made therein could be adopted by him as a basis for the distribution of the fund.

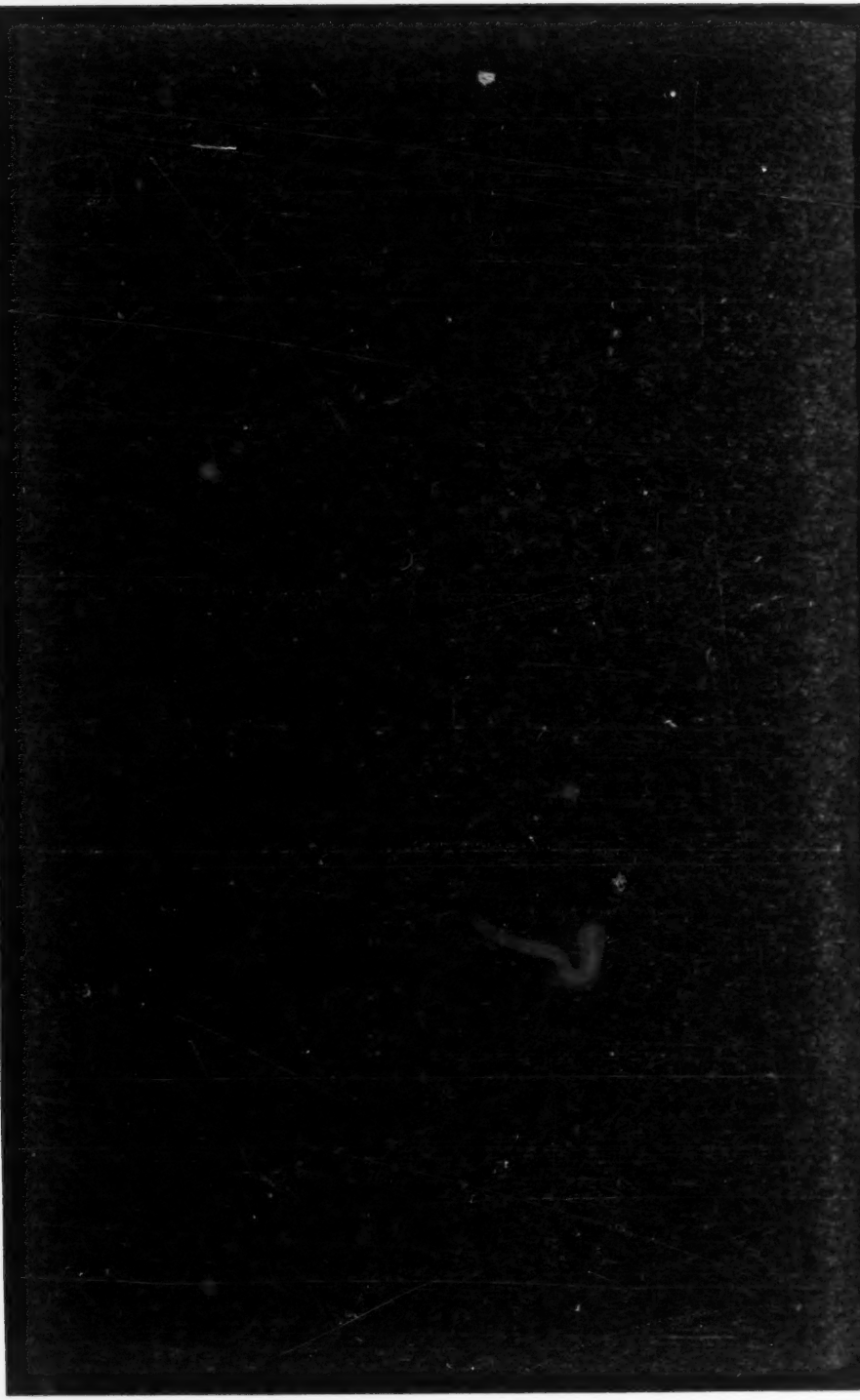
We reassert the proposition that it was the *duty* of the Secretary of the Treasury to have paid our certificates upon presentation to him, in accordance with the plain, mandatory provisions of the Act of Congress of Feb. 27, 1896.

Respectfully submitted,

GEO. N. BAXTER,

Attorney for Plaintiff in Error.





In the Supreme Court of the United States.

OCTOBER TERM, 1919.

JOHN W. LECRONE, RECEIVER OF THE Orinoco Company, Limited, plaintiff in error,
v.
WILLIAM G. MCADOO, SECRETARY OF THE Treasury.
No. 304.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

THE FACTS.

Plaintiff in error (hereinafter called the petitioner) on February 12, 1918, filed in the Supreme Court of the District of Columbia a petition for mandamus, alleging that he was the receiver of the Orinoco Company, Limited (a corporation), duly appointed by order of the District Court for the Fifth Judicial District of Minnesota; that the defendant McAdoo was the then Secretary of the Treasury; that on the 9th day of September, 1909, the United States Government entered into a protocol with the Venezuelan

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Government whereby it was stipulated that in consideration of the release of certain claims of citizens of the United States against said Venezuelan Government, among which was one on behalf of said Orinoco Company, the said Venezuelan Government would pay to the United States the sum of $385,000 in eight equal annual instalments beginning on said 9th day of September, 1909; that said payments were made and covered into the Treasury of the United States in accordance with the provisions of the Act of February 27, 1896, c. 34, 29 Stat. 32 (Compiled Statutes, 1916, sec. 6668); that on June 20, 1911, upon claim of petitioner, the Secretary of State determined that there was due out of said fund to said petitioner as receiver the sum of $75,000; that in pursuance of said determination the Secretary of State issued certain certificates drawn on the Secretary of the Treasury to said petitioner, including the two which are involved in this suit, viz., one dated August 25, 1912, for $9,375, and one dated May 5, 1917, for $46,875; that on May 11, 1917, petitioner presented said certificates to the defendant at Washington, D. C., with request for their payment, but that defendant refused, and continued so to refuse at the time of the institution of this suit, to make payment thereof; and that the said District Court for the Fifth Judicial District of Minnesota by its order of October 29, 1917, had directed the institution and prosecution of this proceeding. The prayer of the petition was for the issuance of a peremptory writ of mandamus directed to the Secretary of the Treasury to

compel payment of the amounts covered by the certificates and for damages and costs. (Record, 2–3.)

The answer of the defendant McAdoo to the rule to show cause issued in response to the petition, reserving the right to take advantage of the errors and insufficiencies of said petition and to thereafter question the jurisdiction of the court and the lack of status of the petitioner to bring this suit (Record 3), averred, among other things, that there were then pending two suits on the equity side of said Supreme Court of the District of Columbia, in which said petitioner, as well as himself, were parties defendant; that petitioner had answered to the merits and had fully submitted himself to the jurisdiction of said Supreme Court of the District of Columbia in said causes; that the amounts concerning which the petitioner seeks payment were a part of the fund involved in said suits; that the adverse claimants to the fund in said suits had not been made parties to this litigation and had not consented to the adjudication of their rights herein; and further that petitioner should be remitted to proceed in said equity suits, wherein the rights of all parties claimant could be passed upon and finally determined, so that upon final decree therein, he could make proper payment and disbursement of the fund with safety to the interests of the United States. (Record 5–6.)

Petitioner demurred to the answer on the ground that it was bad in substance (Record 7–8). Said

demurrer was overruled and, petitioner electing to stand thereon, an order was entered denying the writ of mandamus, dismissing the petition, and discharging the rule to show cause. (Record 9.)

On appeal to the Court of Appeals of the District of Columbia, the judgment of the trial court was affirmed, from which ruling this writ of error is taken. (Record 11–17.)

THE ARGUMENT.

I.

This writ of error should be dismissed (1) because this suit has abated and (2) because the plaintiff in error, appointed as receiver by a Minnesota court, had no legal authority to institute and prosecute this suit in the District of Columbia.

(1) This suit has abated.

The defendant in error McAdoo resigned the office of Secretary of the Treasury to take effect December 15, 1918. In the absence of statute this proceeding for mandamus would have abated on his retirement. *United States* v. *Boutwell*, 17 Wall. 604, wherein it was said (p. 607–8):

> It necessarily follows from this, that on the death or retirement from office of the original defendant, the writ (mandamus) must abate in the absence of any statutory provision to the contrary.

A motion to substitute the successor in office was accordingly denied in that case.

To alleviate the hardship incident to this state of the law, the Act of February 8, 1899, c. 121, 30 Stat.

822 (Compiled Statutes 1916, sec. 1594) was passed. This act provided

> That no suit, action, or other proceeding lawfully commenced by or against the head of any Department or Bureau or other officer of the United States in his official capacity, or in relation to the discharge of his official duties, shall abate by reason of his death, or the expiration of his term of office, or his retirement, or resignation, or removal from office, but, in such event, the Court, on motion or supplemental petition filed, *at any time within twelve months thereafter*, showing a necessity for the survival thereof to obtain a settlement of the questions involved, may allow the same to be maintained by or against his successor in office, and the Court may make such order as shall be equitable for the payment of costs. (Italics ours.)

It will be seen that such substitution of the successor in office must be moved *within twelve months* after the office has been vacated. If the substitution be not moved within the twelve months' period, *as is the fact in this case*, the law stands as it was declared in the Boutwell case, *supra*, and it necessarily follows that the case has abated and there is no jurisdiction left [redacted] to be exercised by this Honorable Court.

Indeed, no attempt has yet been made in this [redacted] to make parties.

(2) The plaintiff in error, appointed as receiver by a Minnesota court, had no legal authority to institute and prosecute this proceeding in the District of Columbia.

Plaintiff in error asserts as his authority for the bringing of this suit in the District of Columbia an order of the District Court for the Fifth Judicial District of the State of Minnesota (the court appointing him receiver), dated October 29, 1917. (Record 3.)

It is well settled that, in the absence of some conveyance or statute vesting the title of the property of the corporation in him, a receiver cannot sue in the courts of a foreign jurisdiction, upon the order of a court appointing him, to recover property therein of said corporation. *Great Western Mining Company* v. *Harris*, 198 U. S. 561, 573 et seq., citing *Booth* v. *Clark*, 17 How. 322. See also *Sterrett* v. *Second National Bank*, 248 U. S. 73, 78, wherein this Court, speaking through Mr. Justice Day, said:

> An examination of the sections of the statutes, here involved, in the light of the decisions of the Supreme Court of Alabama, does not in our opinion warrant the conclusion that title is vested in the receiver as assignee or as statutory successor of the insolvent corporation in such wise as to authorize the action to recover in a foreign jurisdiction.

There does not appear to be any showing in the record that there has been any vestment of title in the plaintiff in error of the property and assets of the corporation either by conveyance of the corporation or by provision of the statute law of Minnesota,

nor does an examination of such law disclose any such provision. The status of receivers appointed by Minnesota courts is clearly stated in the case of *State of Minnesota* v. *Red River Valley Elevator Company*, 69 Minn. 131, 134:

> A receiver is not the owner of the property intrusted to his custody. He is merely an officer of the court holding possession of the property for the benefit of those whom it may concern. His possession is, in one sense, their possession, although in another sense the possession of the court. *His appointment does not in any way affect the right or title to the property, but merely changes the possession and control of it for the purposes of the receivership.* The receivership neither works a dissolution of the corporation *nor deprives it of the title to its property.* It merely delegates to the receiver, as an officer of the court, the power to take charge of it, and dispose of it for the benefit of those entitled to it, viz. the corporate creditors and stockholders. (Italics ours.)

See also *Hale* v. *Allinson*, 188 U. S. 56.

Nor can this suit be justified on the principle of comity. As this Court said in *Great Western Mining Company* v. *Harris*, *supra* (p. 576):

> It will thus be seen that the decision in *Booth* v. *Clark* rests upon the principle that the receiver's right to sue in a foreign jurisdiction is not recognized upon principles of comity * * *.

While it is recognized that in the case of *Bernheimer* v. *Converse*, 206 U. S. 516, this Court upheld

the right of a Minnesota receiver to bring suit in the United States Circuit Court for the Southern District of New York to enforce an alleged stockholders' liability under the Constitution and laws of the State of Minnesota, that suit was allowed on the ground that the statute, which relates alone to the enforcement of the liability of stockholders (see Act in margin of First Nat. Bank v. Converse, 200 U. S. 425, 429), conferred such right "upon the receiver, as a *quasi* assignee, and representative of the creditors, and as such vested with the authority to maintain an action." (P. 534.) The statute does not mention any other actions by such receiver, or alter the general relation of receivers.

II.

Assuming for the sake of argument, that this court now has jurisdiction in this case, the judgment of the Court of Appeals of the District of Columbia is correct and should be affirmed.

The court below based its decision upon the well established principle that mandamus will not issue where there is another adequate remedy, and held that the Supreme Court of the District of Columbia (the trial court), being a court of general jurisdiction, had full power to dispose of all the questions raised or which might thereafter be raised by the plaintiff in error in the two equity suits pending therein, and could grant him complete relief with respect to every right which he might have in the fund in controversy.

The decision of the Court of Appeals is in harmony with those of this Court in *Kendall* v. *Stokes*, 3

Howard 87, 100, and *Bayard* v. *White*, 127 U. S. 246, 250.

The action of the Secretary of the Treasury in withholding payment of the certificates held by the plaintiff in error is fully justified by reason of his knowledge of the adverse claims to the fund of which the amounts represented by said certificates formed a part. If payment had been made to the plaintiff in error and it had developed that some other person was entitled thereto, the Secretary would not have been relieved from liability. *United States* v. *Borcherling*, 185 U. S. 223.

The case of *Bayard* v. *White*, 127 U. S. 246, is largely analogous to the instant case. In that case, in answer to a petition for writ of mandamus to compel the Secretary of State to pay to the petitioner part of an award made by the Mexican claims commission, the Secretary set up that he could not recognize the claim of the petitioner without ignoring the conflicting claim of another person between whom and the petitioner litigation in respect to the award was then and had for a long time been pending. On demurrer, the answer was held sufficient. The Court said (p. 250):

> The Secretary of State, in view of such litigation, was not bound to decide between such conflicting claims, after he had notice of them, and that they were in litigation, and when his decision might, perhaps, be a different one from what that of the court would be in the litigation.

Assignments of Error.

(The specifications of error will be found on pages 15 and 16 of the Record and on page 3 of the brief for Plaintiff in Error.)

Points 1 and 3 go to the jurisdiction of the Supreme Court of the District of Columbia to entertain the two equity suits in question. It suffices to say in this connection that, so far as appears from this record, no objection to the jurisdiction of that Court appears to have been interposed by the plaintiff in error. As a matter of fact, as the record does show, the plaintiff in error appeared and fully answered to the merits in each case. This would equally dispose of the proposition that the plaintiff in error was there sued without the consent of the Minnesota court, without considering the statute of Minnesota (sec. 7687, General Statutes of Minnesota, 1913) permitting suit against receivers without prior leave of court.

Point 2 questions the authority of the Supreme Court of the District of Columbia "to revise and reverse the determination of the Secretary of State that the fund was due to the petitioner."

The statute under which the Secretary of State issued the certificates held by the plaintiff in error is the Act of Congress approved February 27, 1896, c. 34, 29 Stat. 32 (Compiled Statutes, 1916, sec. 6668), which provides that—

> Hereafter all moneys received by the Secretary of State from foreign governments * * * in trust for citizens of the United States * * * shall be deposited and covered into the Treasury.

> The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.
>
> Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the aforesaid beneficiaries thereof of the certificates herein provided for.

The statute does not direct payment to any particular person; it directs the Secretary of the Treasury to pay the "amounts so found due." It is an impossible assumption that Congress intended to require payment to the nominee of the Secretary of State in the face of rival claims asserted by suit and thus possibly let survive a just and legal claim against the United States of a rightful claimant.

But even if the original claimant was properly ascertained for the purposes of issuing warrants by the Secretary of State, this does not decide the question raised in the litigation over this fund of which the Supreme Court of the District had acquired jurisdiction prior to the bringing of this petition for mandamus.

The statute quoted is only a part of the law which the Secretary of the Treasury should heed. The money payable is property held in trust and under the decision in the Borcherling case *supra* it must be paid to the party entitled. The certificate of the Sec-

retary of State may be conclusive as to the amount (and as to the damage which it liquidates), but it cannot be as to the person entitled at the time of payment, so as to preclude others having rights, because, being property, it may have been assigned, as in the Borcherling case, or otherwise dealt with so as to give title to others, or there may be claims against it of an equitable nature which call for decision by a court having jurisdiction of all parties.

Point 4 asserts that the Court of Appeals erred in holding that the plaintiff in error had an adequate remedy in said equity suits for the wrongs complained of in his petition. The opinion of the court below (Record 11–12) sufficiently answers this contention, and nothing here said could add thereto.

CONCLUSION.

It is submitted that this writ of error should be dismissed, or the judgment of the court below affirmed.

ALEX. C. KING,
Solicitor General.
W. MARVIN SMITH,
Assistant Attorney, Department of Justice.
MARCH, 1920.

LECRONE, RECEIVER OF THE ORINOCO COMPANY, LIMITED, *v.* McADOO, SECRETARY OF THE TREASURY.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 304. Submitted April 26, 1920.—Decided June 1, 1920.

A writ of error to review a judgment of the Court of Appeals of the District of Columbia dismissing a petition for mandamus against the Secretary of the Treasury must be dismissed if, after respondent's resignation from office, his successor has not been substituted within twelve months. P. 218. Act of February 8, 1899, c. 121, 30 Stat. 822.

In default of such timely substitution, the petition cannot be retained to charge the respondent personally in damages (D. C. Code, § 1278), since damages are only incident to allowance of the writ. P. 219.

Writ of error to review 48 App. D. C. 181, dismissed.

THE case is stated in the opinion.

Mr. George N. Baxter for plaintiff in error.

The Solicitor General and *Mr. W. Marvin Smith* for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a petition to the Supreme Court of the District of Columbia for mandamus to direct the Secretary of the Treasury to pay the amount of two certificates issued to the petitioner by the Secretary of State. The petitioner is receiver of the Orinoco Company, Limited. That Company had claims for damages against the United States of Venezuela, which, with others, by agreement

between the two governments, the United States of America released upon receiving from the United States of Venezuela a certain sum in trust for the parties having the claims. By the Act of February 27, 1896, c. 34, 29 Stat. 32, moneys so received are to be paid into the Treasury and the Secretary of State is to "determine the amounts due claimants, respectively, . . . and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due." Each of such trust funds is declared to be "appropriated for the payment to the ascertained beneficiaries thereof of the certificates" provided for. The answer alleged that there were pending in the same Supreme Court two bills in equity, one by a private person and one by the Orinoco Company, Limited, asserting claims to the fund, that the respondent and petitioner both are parties to those proceedings, the petitioner having submitted to the jurisdiction, and that the petitioner should be limited to those proceedings and await the result of the decrees. The petitioner demurred. The demurrer was overruled and the petition was dismissed by the Supreme Court and its judgment was affirmed by the Court of Appeals.

The theory of the answer seems to be that the purpose of the act of Congress was to appropriate a fund to the claim and to transfer the claim to that fund, leaving the question of title open to litigation in the ordinary courts, as has been held in more or less similar cases. *Butler* v. *Goreley*, 146 U. S. 303, 309, 310. *S. C.* 147 Massachusetts, 8, 12. *United States* v. *Dalcour*, 203 U. S. 408, 422. *Robertson* v. *Gordon*, 226 U. S. 311, 317. See also *Bayard* v. *White*, 127 U. S. 246. It is thought that Congress hardly can have sought to confer judicial powers upon the Secretary of State. *United States* v. *Borcherling*, 185 U. S. 223, 234. And as the certificates are not gifts but are in recognition of outstanding claims, *Williams* v. *Heard*,

140 U. S. 529, reversing *s. c.* 146 Massachusetts, 545, judicial action is supposed to be necessary for the final determination of the right. But we cannot consider that question or the other arguments upon the merits of the case, because, Mr. McAdoo having resigned the office of Secretary of the Treasury, his successor was not substituted within twelve months; which is the limit for such substitution fixed by the Act of February 8, 1899, c. 121, 30 Stat. 822. It is said that the Code of the District of Columbia, § 1278, allows the petitioner to recover damages in the same proceeding and that the petition should be retained to charge Mr. McAdoo personally. But apart from other questions the damages are only incident to the allowance of the writ of mandamus, and as that cannot be allowed the whole proceeding is at an end. See *Pullman Co.* v. *Knott*, 243 U. S. 447, 451; *Pullman Co.* v. *Croom*, 231 U. S. 571, 577.

Writ of error dismissed.

CITY OF NEW YORK *v.* CONSOLIDATED GAS COMPANY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 566. Argued April 22, 1920.—Decided June 1, 1920.

A city applied to intervene in a suit brought by a gas company to enjoin state officials from enforcing a rate alleged to be confiscatory. *Held*, that the application was addressed to the discretion of the District Court, and that an order denying it was not final for purpose of appeal. P. 221.

When the Circuit Court of Appeals erroneously assumes jurisdiction of a case in which the District Court's jurisdiction is based wholly on constitutional grounds, and makes a final order, this court has

between the two governments, the United States of America released upon receiving from the United States of Venezuela a certain sum in trust for the parties having the claims. By the Act of February 27, 1896, c. 34, 29 Stat. 32, moneys so received are to be paid into the Treasury and the Secretary of State is to "determine the amounts due claimants, respectively, . . . and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due." Each of such trust funds is declared to be "appropriated for the payment to the ascertained beneficiaries thereof of the certificates" provided for. The answer alleged that there were pending in the same Supreme Court two bills in equity, one by a private person and one by the Orinoco Company, Limited, asserting claims to the fund, that the respondent and petitioner both are parties to those proceedings, the petitioner having submitted to the jurisdiction, and that the petitioner should be limited to those proceedings and await the result of the decrees. The petitioner demurred. The demurrer was overruled and the petition was dismissed by the Supreme Court and its judgment was affirmed by the Court of Appeals.

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Writ of error dismissed.